HIGH COURT OF UTTARANCHAL AT NAINITAL

(Chapter VIII Rule 32 (2) (b)
Description of the Case.

CRIMINAL MISC. APPLICATION NO. 113 OF 2003

Date of Decision : 22nd August, 2005

A.F.R. (Approved for reporting)

~~Not approved for reporting.~~

Date 22.8.05 Initial of Judge.

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

CRIMINAL MISC. APPLICATION NO. 113/2003

Raju Sharma S/o R.K.Sharma, resident of 16/16, Shakti nagar, Delhi erstwhile Secretary (IAS) to the Government of Uttar Pradesh, Department of Uttaranchal Vikas Bhawan, Janpath, Lucknolw, UP and was also holding the charge of Managing Director (IAS) UP Hill Electronics Corporation, Ltd, Gomti nagar, Lucknow, UP but presently on deputation to the Government of India and holding the post of Director (IAS), Chemical Weapons Convention, Sansad Marg, New Delhi……..Applicant

VERSUS

1. Devendra Singh Jeena son of late Prem Singh, resident of locality Nar Singh, district Almora, Uttaranchal Rajya.
2. Chief Judicial Magistrate,District Almora, Uttaranchal Rajya.

Dated:- 22-8-2005

Hon'ble J.C.S. Rawat, J.

1. Heard Sri B.S.Adhikari learned counsel for the applicant, Sri Anurag Bisari learned counsel for respondent no.1 and learned AGA for the State and perused the record.

2. This is an application under section 482 Cr.P.C. for quashing the order dated 12.5.2003 passed in criminal case no.1173 of 2003 Dr.D.S.Jeena Vs. Raju Sharma by the Chief Judicial Magistrate, Almora.

3. The facts, in brief, are that the respondent no.1 filed a complaint before the Chief Judicial Magistrate, Almora with the allegations that the respondent no.1 is a permanent resident of Almora and he had been working in the U.P. Hill Electronics limited as a senior

Accounts Officer. It is further alleged in the complaint that the applicant is the Managing Director of the said company. It is further alleged that on 10.12.2002 a press note was issued by the applicant-accused. The press note which was published as under:-

"lo lk/kkj.k dk lfpr fd;k tkrk g fd Jh Mh0,l0 thuk i= Loxh; Jh ie flg thuk] fuoklh Mh0&1193@2 bfUnjk uxj] y[kuÅ dh e el fgy by DVkfudl djikj'ku fyfeVM] xkerh uxj] y[kuÅ dh lok dk fnukd 06-12-2000 l lekIr djr g, inP;r dj fn;k x;k gA

Jh Mh0,l0 thuk bl fuxe e lgk;d y[kkdkjh d in ij Hkherky fLFkr dk;ky; e dk;jr FkA Jh thuk dh lok bud }kjk viu lok dky e dh x;h foRrh; vfu;ferkvk in dk n#i;kx dju rFkk jkt dh; /ku dk xcu dju d nk"kh ik; tku d mijkUr 06-12-2000 l lekIr dh x;h gA

Jh thuk pfd vc e ll ;0ih0 fgy by DVfuDl dkjikj'ku d de pkjh ugh gA vr% mud }kjk fuxe lEcfU/kr dk;k ij turk dk fn; x; fdlh Hkh idkj d vk'okluk] yu&nu lEcfU/k fdlh Hkh idj.k dk nkf;Ro e e ll ;0ih0 fgy by DVkfuDl dkjikj'ku dk ugh gkxkA"

4. The complainant respondent no.1 stated that he is a very reputed person belonging to a respectable family and the publication of the news item wherefrom the reputation of respondent no.1 has been tarnished in his area. It is further alleged in the complaint that the respondent no.1 was dismissed on 6.12.2000.Feeling aggrieved by the said order he preferred a writ petition before the Allahabad High Court which was decided in favour of the complainant-respondent no.1 on 28.2.2001 and it was further alleged in the complaint that all the allegations made in the complaint were found malafide and the order passed by the Managing Director was quashed by the Court. It was further alleged that no allegation mentioned in the complaint was found true against the complainant. Thereafter the complaint- respondent No.1 gave a notice to the applicant on 01.12.2001 for seeking compensation of

Rs.10.00 lacs. The applicant did not pay and heed to the said notice & hence this complaint was filed. Respondent No.1 examine himself under section 200 and his witness Hari Singh Furtyal u/s 202 Cr.P.C. After hearing the parties the learned Magistrate ordered on 19.01.2002 for summoning the applicant.

5. Thereafter the applicant accused filed objection before the learned Magistrate alleging therein that the complainant has not complied with the provision of section 197 Cr.P.C. in as much as the necessary sanction of the Government was never obtained by the complainant. It was also challenged on the ground that the list of the witness has not been given as required under the provision of Code of Criminal Procedure. The learned Magistrate after hearing parties dismissed the said objection and proceeded with the case.

6. The first and foremost contention of the learned counsel for the applicant before this court is that the allegations made in the complaint do not make out a case against the applicant and it will be in the interest of justice to quash the said order on this ground alone. The learned counsel for the respondent no.1 refuted the contention. It has to be seen whether any offence against the applicant is made out or not. At the outset it has to be seen as to whether the defamation in the present case is made out or not. The definition of 'defamation' has been incorporated u/s 499 IPC. The concept of defamation is that the person, by words either spoken or intended to be read, or by sings or by visible representations makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such

imputation will harm the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person. Such imputation may be made in one or more of the ways specified u/s 499 IPC.

(1) Making or publishing of an imputation concerning a person.
(2) Such imputation should have been either spoken or intended to be read,
(3) By signs
(4) By visible imputation
(5) The said imputation should have been made with intent to harm or knowing or having reason to believe that it will harm the reputation of such person or defaming him.

The aim and object of the legislature while introducing this section is that protection of the reputation and honour of the person if the imputation is defamatory per se the necessary mens rea will be presumed. An explanation has been added that it gives the defamation of the reputation that the reputation in the eye of other person not in the estimation of his own.

7. It is admitted in the complaint itself that the complainant was removed from the service of the company on 6.12.2000 by the applicant. Thereafter a press note was issued in the newspaper that the services of the complainant were termination on the ground that he has misused his official position and he also misappropriated the amount. The press note was published on 10.12.2000. Meaning thereby the order of removal was in force on the date when such publication was made. The applicant is the Managing Director of the company and the said company was

carrying on the business with the public. It was the duty of the Managing Director to apprise the public at large that the services of the complainant respondent were terminated on the ground that he misappropriated the amount and also his official position. It is also admitted that the Allahabad High Court quashed the said removal order on 20.2.2001 after a lapse of three months. The operative portion of the order is as under:-

" *In view of what has been stated above, the writ petition is allowed and a writ in the nature of certiorari quashing the impugned order of dismissal dated 6.12.2000 contained in annexure no.1 to the writ petition is issued. However, it will be open for the respondents to hold a fresh enquiry from the stage the fault has occurred in the enquiry."*

8. The facts, which have been indicated in the press note, are true. If the imputations are true and made in his official capacity to warrant the press note with any business of the company such imputation will not come within the purview of definition. I am fortified to take the view with the decision in the case of **Jawahar Lal Darda and others Vs. Manohar Rao Ganpatraao Kapsikar (1998) 4 Supreme Court Cases 112.**

9. The learned counsel for the respondent no.1 contended that it is a question of fact as to whether there is a defamation of respondent no.1 or not and this court cannot go into this question. He placed reliance upon the decision **Sewakram Sobhani Vs. R.K. Karanjiya, AIR 1981 Supreme Court 1514.**

10. Before proceeding against the applicant it is necessary that the commission of offence should be made out. If the allegations made against the respondent no.1 are true on the date when the publication was made and the applicant while working as a Managing Director of the company who carries out the business in the area. It is the duty of the Managing Director to inform the public at large so that no transaction could be made with him. As such, the case of **Sewakram Sobhani Vs. R.K. Karanjiya (Supra)** is not applicable in this case. If the offence at the initial stage is not made out then the cognizance cannot be taken against the applicant.

11. In view of the above the cognizance order is liable to be quashed.

12. It was contended on behalf of the applicant that the present complaint has been filed before the Chief Judicial Magistrate and the applicant is a public servant and the complaint should have been filed u/s 199(2) Cr.P.C. before the learned Sessions Judge. The learned counsel for the applicant has relied upon the case Mohd. Hadi Raja, v. State of Bihar, AIR 1998 Supreme Court 1945,in which it was observed that the Managing Director who was working in the Super Bazar which is not a public servant and the public undertakings are not the State within the meaning of Article 12 of the Constitution of India . Section 21 of the Indian Penal Code defines the definition of ‘public servant’. Section 21 (12) reads as under:-

"(a) in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the Government.
(b) in the service or pay of a local authority, a corporation established or under a Central, Provincial or State Act or a Government company as defined in section 617 of the Companies Act, 1956(1 of 1956).

13. In the present case the Hill Electronics Limited has been created by the State government and it is owned and aided corporation of the Sate of U.P. and thereafter State of Uttaranchal. The superbazar is created under the Co-operative Societies Act. Through the contrivance or mechanism of corporate structure, some of the public undertakings are performing the functions which are intended to be performed by the State, ex facie, such instrumentality or agency being a juridical person are independent status and the action taken by them, however, important the same may be in the interest of the State cannot be held to be an action taken by or on behalf of the government. There is a difference in expression used under Section 197 Cr.P.C. and 199 (2) Cr.P.C. The phrase "a public servant not removable from his office save by or with the sanction of the Government" has been used under Section 197 Cr.P.C. Whereas the phrase "any other public servant employed in connection with the affairs of Union or State in respect of his conduct" has been under Section 199 (2) Cr.P.C. The expression public servant has been used in wider term. It cannot be confined as indicated under Section 197 Cr.P.C. The employees of State owned Corporation for the purpose of under Section 199

Cr.P.C., they will be treated a public servant under Section 199 Cr.P.C. Thus the applicant will be treated as a public servant within the meaning of Section 199 Cr.P.C. read with Section 21 (12) I.P.C. the State owned Corporations are State within the meaning of Article 12 of the Constitution of India. The pronouncement of Hadi Raja is not applicable in this case. The respondent no.1 has also filed a writ petition before the Allahabad High court against the Hill Electronics Ltd treating the Hill Electronics as 'State' and the termination order was quashed. As such the present petition should have been filed before the learned Sessions Judge as provided under Section 199 (2) Cr.P.C.

14. In view of the above discussion the application is liable to be allowed. The entire proceedings initiated in pursuance of the complaint and summoning order dated 12.5.2003 passed by the Chief Judicial Magistrate, Almora in complaint case no.1173/2001 are hereby quashed.

(J.C.S.RAWAT J)

August 22, 2005

MPS